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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 6, 2001

APPLICATION OF

ROBERT A. WINNEY D/B/A

CASE NO. PUE000665

THE WATERWORKS COMPANY OF

FRANKLIN COUNTY

To change rates and charges

ORDER REMANDING CASE TO EXAMINER

Before the Commission is the application of Robert A. Winney d/b/a The Waterworks Company of Franklin County ("The Waterworks Company" or "Company") to change rates and charges as provided by the Small Water or Sewer Public Utility Act, §§ 56-265.13:1 through 56-265.13:7 of the Code of Virginia ("Small Water Act"). In the Report of Alexander F. Skirpan, Jr., Hearing Examiner of March 16, 2001 (the Report), the examiner recommended that the Commission grant The Waterworks Company's request to withdraw its application and dismiss the case. In comments on the Report, the Commission Staff argued that the application should not be dismissed. Upon consideration of the applicable statutes and the circumstances of this particular case, the Commission will remand the case to the examiner with

instructions to set the matter for hearing.

As the Commission noted in the Order for Notice and Hearing of December 12, 2001, The Waterworks Company commenced this proceeding by filing its notice to increase rates and charges and to establish a new charge. As we directed in the Order for Notice and Hearing, the Staff investigated the application. In testimony and exhibits filed with the Clerk and served on the Company, the Staff recommended discontinuing the annual availability charge. In support of its position that the availability fee should be eliminated, the Staff contended that the fee was not just and reasonable because the Company could not connect customers. In response to the Staff recommendations, The Waterworks Company filed a letter withdrawing its application, and the hearing examiner recommended that the case be dismissed.

In its comments on the Report, the Staff opposed dismissal because its testimony and exhibits raised an issue of the continued reasonableness of the annual availability charge. In addition, the Staff argued that the Commission's Order of March 20, 2001, in B&J Enterprises, L.C., Case No.PUE990616, entered after the Report was filed, requires consideration of the availability charge. In the Order of March 20 in Case No. PUE990616, we clarified that an availability charge could be applied only when the customer had contracted to pay the charge.

The Small Water Act reduces the regulatory burden on small companies and limits the Commission's jurisdiction. The Small Water Utility Act does confer authority to review the reasonableness of charges after the company initiates the statutory process for changing its rates and charges. In this case, the Staff identified a specific charge previously approved and questioned the continuing reasonableness of the charge. We do not hold that the Small Water Act bars an applicant from withdrawing an application in all instances. In the circumstances of this case, however, the Staff clearly raised issues with a specific charge and offered testimony supporting its concerns. In this situation, the matter should continue to hearing. The Staff will bear the burden of producing evidence that the availability charge is no longer just and reasonable or that the required contractual basis for such a charge can not be established.

The Commission declines to accept the recommendations made in the Report. Accordingly, IT IS ORDERED that this matter be remanded to the hearing examiner who will reschedule the matter for hearing and further proceedings.